Supreme Court, U.S.
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CASE NO. 99-1468
IN THE UNITED STATES SUPREME COURT
October Term 1999

THE STATE OF FLORIDA,
Petitioner,

vs.

JEFF WILSON,
Respondent.

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA FOURTH DISTRICT

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REASON FOR GRANTING THE WRIT

THE DECISION OF THE COURT BELOW THAT AN OFFICER'S GENERALIZED SAFETY CONCERNS ARISING FROM A LAWFUL TRAFFIC STOP IS INSUFFICIENT TO AUTHORIZE THE OFFICER TO ORDER THE PASSENGER, WHO VOLUNTARILY EXITED THE VEHICLE, TO RETURN TO THE VEHICLE OR TO RE-ENTER THE VEHICLE UNTIL THE COMPLETION OF THE TRAFFIC STOP CONFLICTS WITH DECISIONS OF THIS COURT, DECISIONS OF UNITED STATES COURTS OF APPEAL AND DECISIONS OF APPELLATE COURTS OF THE OTHER STATES.

The Respondent argues three reasons why the Court should not accept jurisdiction over this case. None are meritorious and therefore review should not be granted.

Respondent first asserts that the State court's decision was based on independent state law grounds, specifically on Fla. Stat. Ch. 901.151 (1997), Florida's Stop and Frisk Law.

In *Perez v. State*, 620 So. 2d 1256 (Fla. 1993), the Supreme Court of Florida in construing the scope of Fla. Stat. Ch. 901.151 (1987), held that the statute is subject to the conformity clause of the Florida Constitution. Fla. Const. art. I, § 12 (amended 1982). Therefore, the Florida courts are bound to follow this Court's interpretation of *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), and to provide no greater protections than this Court's interpretations. *See also State v. Hetland*, 366 So.2d 831 (Fla. 2 DCA 1979), *approved*, 387 So. 2d 963 (Fla. 1980), where prior to the adoption of the conformity clause, the Court held that the provisions of the stop and frisk law were not intended to, and did not, impose any higher standard than that of the Fourth Amendment to the United States Constitution. Therefore, it can not be disputed that the Florida court decided this case under the Fourth Amendment.

Second, Respondent contends that this exact issue was not presented to the Supreme Court of Florida in the petition seeking discretionary review. Respondent claims that Petitioner was required to present the exact claim since the Supreme Court has discretionary jurisdiction over a district court decision that expressly construes a provision of the federal constitution. Fla. Const. art. V, § 3 (b) 3 (amended 1980).

This contention does not withstand close scrutiny since, in the instant case, the district court only applied the Fourth Amendment to the instant facts. A district court's decision expressly construes a provision of the federal constitution when it explains, defines or overtly expresses a view which eliminates some existing doubt as to a constitutional provision in order to decide an appeal. An application of a constitutional provision occurs when the district court applies the constitutional provision to the facts of the case. *Rojas v. State*, 288 So. 2d 234 (Fla. 1973). In the present case, the district court applied the Fourth Amendment to the facts. Since "applying" a constitutional provision is not synonymous with "construing" a constitutional provision, the Supreme Court of Florida did not have discretionary jurisdiction to review the district court's application of the Fourth Amendment unless a direct and express conflict existed between the district courts.

Third, in the trial court, the Respondent filed a motion to suppress the evidence seized pursuant to the stop at issue herein. After the trial court denied the motion to suppress, the Respondent entered a nolo contendere plea, reserving his right to appeal the denial of his motion to suppress. The Florida appellate court simply reversed the trial court's denial of the suppression motion and vacated Respondent's plea. Petitioner was unable to secure from the Florida courts either a stay of the mandate or a extension of speedy trial. The case was nolle prosequi. A case or controversy remains, should the Court hold the stop. The decision of the Florida court would then be vacated and the Respondent's guilty plea would be reinstated. *McLaughlin v. State*, 172 So. 2d 460 (Fla. 1965) (Where the United States Supreme Court determined that the statute under which the defendants were convicted, was unconstitutional, the State Supreme

Court, on remand, was required to recede from affirmance and to remand the cause for disposition in accordance with the new decision).

Based on the foregoing, the Respondent contends that a case or controversy does not exist because he can never be retried pursuant to Florida's speedy trial rule. This contention is inapplicable since the Florida cases upon which reliance is based, concern a nolle prosequi entered before a trial occurred and the purpose of the nolle prosequi was to manipulate the speedy trial period in the State's favor. *State v. Agee*, 622 So. 2d 473 (Fla. 1993); *Genden v. Fuller*, 648 So. 2d 1183 (Fla. 1994). The foregoing rationale is inapplicable herein because, if the Court reverses the Florida court's holding and finds that the stop was lawful, there will not be a retrial, only reinstatement of the plea. The the nolle prosequi does not prevent the Court from granting certiorari.

CONCLUSION

Based on the foregoing reasons, the Petitioner, the State of Florida, respectfully requests that this Court grant its Petition for Writ of Certiorari to the District Court of Appeal of Florida, Fourth District and summarily reverse the District Court based on the authorities herein cited.

Respectfully submitted,

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